



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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*Dep't  
2007*

JAN 08 2008

Ref: 8ENF-L

Honorable John T. Salazar  
U.S. House of Representatives  
Washington, DC 20515-0603

Dear Congressman Salazar:

Thank you for your letter of December 10, 2007, regarding funds recovered by the United States Department of Justice on behalf of the Environmental Protection Agency in litigation against Rico Development Corporation and the estates of Wayne Webster and Virginia Sell. That lawsuit was commenced initially under the authority of the Clean Water Act in 1999 to address violations of a Colorado Discharge Permit System permit regarding ongoing discharges of contaminated mine water from the St. Louis Tunnel located in Rico, Colorado. Violations of the permit dated back to when the permit was held by Anaconda Minerals Company, a predecessor to Atlantic Richfield Company (ARCO). The lawsuit was subsequently amended to add a cost recovery claim under the Compliance Environmental Response, Compensation and Liability Act (CERCLA).

The litigation culminated in separate consent decrees entered into by the United States with the estates of Wayne Webster and Virginia Sell that required those estates to pay \$180,000 and \$110,000, respectively, to the United States. Pursuant to the consent decrees, those sums were to be deposited in the Rico-Argentine Special Account within the Hazardous Substance Superfund to be retained and used to conduct or finance response actions (as defined in CERCLA) at or in connection with the site (as defined in the consent decrees) or to be transferred by EPA to the Hazardous Substance Superfund.

Payment due under the consent decrees was received in early 2005, and the funds were deposited into the Rico-Argentine Special Account. Although EPA was planning to use those funds in conjunction with its various efforts under CERCLA at the site, EPA halted its work at the request of the Town of Rico.

The basis for the Town's request was that cleanup actions would be conducted voluntarily at the site by ARCO, a potentially responsible party (PRP) under CERCLA. Specifically, the Town advised EPA that ARCO would implement a voluntary cleanup plan under state law to address lead contamination in town. The Town also assured EPA that it would create a non-profit corporation that would obtain a Colorado Discharge Permit System permit and provide



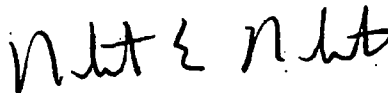
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treatment for the ongoing discharge of contaminated mine water from the St. Louis Tunnel, utilizing funds to be provided by ARCO. Although a non-profit corporation has apparently been created, with ARCO as a member, the unpermitted and inadequately treated discharge from the St. Louis Tunnel continues unabated.

Based on recent correspondence from the Town of Rico to you and the Department of Justice, the Town wants the funds that are contained in the Rico-Argentine Special Account to "aid the Town of Rico in addressing a responsible approach to the issue of discharge and discharge permitting around the St. Louis Tunnel . . . which has proven to be a chronic contributor to degraded water quality within the Rico watershed area." Although, as noted above, the Town committed to undertaking this task with funding from ARCO, EPA is amenable to making funds from the Rico-Argentine Special Account available to ARCO to address the discharge from the St. Louis Tunnel, if ARCO enters into an enforceable agreement with EPA under CERCLA to conduct the work and agrees to construct and operate a state-of-the-art treatment plant to treat the discharge. This is because the funds that were recovered from the estates of Wayne Webster and Virginia Sell can only be used for conducting response actions under CERCLA at the site.

We appreciate your writing on behalf of the Town of Rico and hope this information will assist you in responding to the Town's concerns. If EPA may provide anything further for you or your staff, please contact me or Sandy Fells, our Regional Congressional Liaison, at 303-312-6604.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "R. E. Roberts", written in a cursive style.

Robert E. Roberts  
Regional Administrator